

Case No. 504696

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

REPLY AFFIDAVIT

-against-

Case No. 504696

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

**REPLY AFFIDAVIT IN SUPPORT OF MOTION TO
EXTEND TIME TO PERFECT APPEAL**

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JACOB F. LAMME, being duly sworn, deposes and states as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am an associate with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for the Lewis Family Farm, Inc. (hereafter "Lewis Family Farm" or "Appellant"), plaintiff-appellant in this action (Essex County Index No. 0498-07) (hereafter "*Action No. 1*"). I am also counsel to the Lewis Family Farm in an Article 78 proceeding (Essex County Index No. 315-08) (hereafter "*Action No. 2*") and an action (Essex County Index No. 332-08) (hereafter "*Action No. 3*"), both of which involve the same parties herein. *Action No. 2* and *Action No. 3* were consolidated and are currently pending before Hon. Richard B. Meyer, Acting J.S.C., Essex County Supreme Court. As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. This reply affidavit is submitted in support of Appellant's motion to extend the time in which the it has to perfect its appeal in *Action No. 1*, which is returnable before this Court today (November 17, 2008).

3. In today's mail, I received the "Affirmation in Reply to Appellant's Fourth Request for an Extension of time to Perfect Appeal" submitted by Respondent's counsel on November 14, 2008 (hereafter "Simon Aff.").

4. Respondent does not oppose Appellant's motion. Instead, Respondent submitted papers "in response" to Appellant's motion for an extension. (See Simon Aff., ¶ 2). Rather than oppose Appellant's motion for a 60-day extension, Respondent proposes a 30-day extension. (See *id.*, ¶ 16).

5. Respondent has recently agreed with Appellant that an extension of the appeal in *Action No. 1* is in the interests of judicial economy. (See Respondent's Letter to the Court dated September 12, 2008).

6. Respondent's newly-stated concern over the 2009 growing season has no bearing on this motion. As Respondent correctly states, the stay that this Court granted on May 19, 2008, which allows Appellant to use one of the three farm employee houses, remains in place. (See Simon Aff., ¶ 10). Thus, as it stands now, Appellant cannot use the other two farm structures during the 2009 growing season.

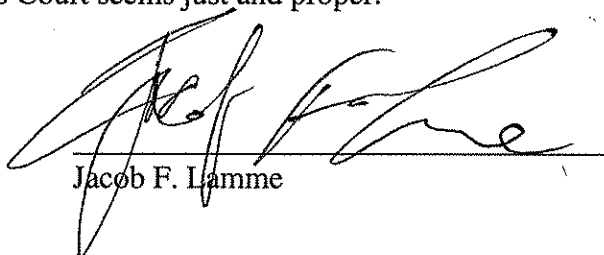
7. This Court has previously granted extensions for the appeal in *Action No. 1* because the issues contained therein are necessarily and inextricably intertwined with the outstanding issues *Action No. 2* and *Action No. 3*, the final order in which remains forthcoming.

8. Thus, there is no practical difference between a 30-day extension (as Respondent proposes) and a 60-day extension—or even a longer extension—at this point. The fact remains

that a subsequent motion to consolidate all outstanding appeals will be necessary once the lower court issues the forthcoming final order in *Action No. 2* and *Action No. 3* and the losing party files a notice of appeal. Thus, because the time in which to perfect *Appeal No. 1* will necessarily have to be extended again anyway by virtue of that consolidation motion, the Court should not grant a mere 30-day extension as Respondent suggests.

9. Finally, as further proof that the Lewis Family Farm's appeal in *Action No. 1* has merit, this Court issued a decision on September 9, 2008 in Case No. 505179, which denied the Adirondack Park Agency's motion for permission to appeal the lower court's decision and order in *Action No. 2*, which determined that none of the court's determinations in *Action No. 1* were essential to its ultimate decision to dismiss the proceeding as "not ripe for judicial intervention". (See July 2, 2008 Decision and Order, Ex. D to the July 3, 2008 Lamme Aff., pp. 8-9). Thus, by denying the Agency's motion, this Court has essentially already stated that the issues involved in the instant appeal will not be heard at this time.

10. Based on the foregoing, the Lewis Family Farm respectfully requests an order from this Court granting: (i) an extension of the time in which to perfect its appeal of Justice Ryan's August 16, 2007 Decision and Order (which has not yet expired) until at least January 25, 2008; and (ii) such other relief as to this Court seems just and proper.



Jacob F. Lamme

Sworn to before me this
17th day of November, 2008.



Notary Public

THERESA J. DODSON
Notary Public, State of New York
No. 01DO4800422
Qualified in Albany County
Commission Expires July 31, 2009